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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRISTOL-MYERS SQUIBB COMPANY,

Defendant.

CIVIL ACTION NO.

**3 : 08 -cv- 097 -RLY -WGH**

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to the Clean Air Act, ("CAA"), 42 U.S.C. § 7401 et seq., against Defendant, Bristol-Myers Squibb Company, ("BMS" or "Defendant") for civil penalties for violations of the industrial refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, §§ 82.152 - 82.166, ("Recycling and Emission Reduction"), promulgated pursuant to Title VI of the CAA ("Stratospheric Ozone

Protection”), 42 U.S.C. §§ 7671 - 7671q, at its facilities located in Wallingford, Connecticut; Evansville and Mount Vernon (Logistics and Manufacturing facilities), Indiana; Billerica, Massachusetts; Zeeland, Michigan; Hopewell, Lawrenceville, and New Brunswick, New Jersey; Buffalo and East Syracuse, New York; and Barceloneta, Humacao, and Mayaguez, Puerto Rico (collectively, Defendant’s Subject Facilities”).

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and pursuant to 28 U.S.C. §§ 1331, 1345, 1355.

3. Venue is proper in the Southern District of Indiana, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), and 1395(a), because some of the events giving rise to the claims alleged in this Complaint occurred there.

#### NOTICE AND AUTHORITY

4. The United States Department of Justice has authority to bring this action on behalf of the Administrator of the Environmental Protection Agency (“EPA”) pursuant to 28 U.S.C. §§ 516, and 519, and Section 305(a) of the CAA, 42 U.S.C. § 7605(a).

5. Notice of the commencement of this action has been given to the air pollution control agency for each state where Defendant's facilities are located. 42 U.S.C. § 7413(b).

#### DEFENDANT

6. Defendant is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in New York City, New York.

7. At times relevant to this action, Defendant owned and operated facilities including, but not limited to those locations set forth in Paragraph 1 of this complaint. Among other things,

Defendant is engaged in the discovery, development, manufacturing, and distribution of prescription pharmaceutical products and other consumer healthcare products.

8. Defendant is a “person,” as that term is defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e) and 40 C.F.R. § 82.152, and within the meaning ascribed under Section 113 of the CAA, 42 U.S.C. § 7413.

#### DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Complaint that are defined in the CAA, or in the regulations promulgated pursuant to the CAA, will have the meaning assigned to them in the CAA and regulations. Whenever the terms set forth below are used in this Complaint, the following definitions apply:

a. “Appliance” means any device which contains a Refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer, as defined at 40 C.F.R. § 82.152.

b. “Comfort Cooling Appliance” or “CCA” means any Appliance that contains at least 50 pounds of Refrigerant at full charge, but is used primarily for the comfort of employees working in the plant and is covered by 40 C.F.R. § 82.156(i)(5).

c. “Commercial Refrigeration Appliance” or “CRA” means any Appliance which contains and uses a Refrigerant for commercial purposes, such as in the retail food and cold storage sectors, including equipment used to store meat, produce, dairy products and other perishable goods, and contains at least 50 pounds of Refrigerant at full charge.

d. “Defendant” means Bristol-Myers Squibb Company.

e. “Defendant’s Applicable Facilities” or “Facilities” means those facilities owned and

operated by Defendant that are identified in Paragraph 1, above.

f. “Facility” means a discrete parcel of real property or such a parcel improved by Defendant’s buildings, factory, plant, premises, or other thing, at which Defendant operates its business, containing at least one Appliance.

g. “Industrial Process Refrigeration Appliance” or “IPRA” means any Appliance that is directly linked to the manufacturing process in the chemical, pharmaceutical, petrochemical, and manufacturing industries, and that contains more than fifty pounds of Refrigerant at full charge.

h. “ODS” means an ozone depleting substance which contains and uses a Class I or Class II substance as a refrigerant or a blend of Class I or Class II substances. Section 602 of the CAA, 42 U.S.C. § 7671(a), 40 C.F.R. §82.3, App. A and B.

i. “ODS System” means any cooling system that uses ODS.

j. “Refrigerant” means a Class I or a Class II substance as defined in 40 C.F.R. § 82.3, or a blend of Class I or Class II substances.

#### STATUTORY AND REGULATORY PROVISIONS

11. Title VI of the CAA, 42 U.S.C. §§ 7671-7671q (“Stratospheric Ozone Protection”) implements the Montreal Protocol on Substances that Deplete the Ozone Layer, and mandates the elimination or control of emissions of substances which are known or suspected to cause or significantly contribute to harmful effects on the stratospheric ozone layer, referred to as Class I and Class II substances.

12. Section 608 of Title VI of the CAA, 42 U.S.C. § 7671g (“National Recycling and Emission Reduction Program”) requires that the EPA promulgate regulations establishing standards and requirements regarding the use and disposal of Class I and Class II ozone-depleting

substances during the service, repair, or disposal of CCAs, CRAs, and IPRAs.

13. EPA promulgated the regulations required by Section 608, codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166, ("Recycling and Emissions Reduction") (hereinafter "Subpart F Regulations"), on May 14, 1993. 58 Fed. Reg. 28,712.

14. Section 608 of the CAA states, "it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an Appliance or industrial process refrigeration, to knowingly vent or otherwise release or dispose of any such Class I or Class II substances used as a refrigerant in such Appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment." 42 U.S.C. § 7671g(c)(1). The Subpart F Regulations reiterate this prohibition, effective June 14, 1993. 40 C.F.R. § 82.154(a).

15. The Subpart F Regulations also impose leak repair and record-keeping requirements for all types of Appliances containing more than fifty pounds of Refrigerant, including CCAs, CRAs, and IPRAs. These regulations are aimed at reducing emissions of Class I and Class II ozone-depleting substances in the atmosphere.

16. Pursuant to 40 C.F.R. § 82.156(i)(1), a Facility with CRAs must keep the leak rate of its equipment at or below a 35% annualized leak rate. Where the annualized leak rate from a CRA exceeds 35%, the Facility must repair the leaks to bring the leak rate down to below 35% within thirty days. 40 C.F.R. § 82.156(i)(1).

17. Pursuant to 40 C.F.R. § 82.156(i)(2), a Facility with IPRAs must keep the leak rate of its equipment at or below a 35% annualized leak rate. Where the annualized leak rate from an IPRA exceeds 35%, the Facility must repair the leaks to bring the leak rate down to below 35% within thirty days (120 days if an industrial process shutdown, as defined by the Subpart F

Regulations, is needed to repair the Appliance, and additional time if the facility cannot get a necessary part). 40 C.F.R. § 82.156(i)(2).

18. Pursuant to 40 C.F.R. § 82.156(i)(5), a Facility with CCAs must keep the leak rate of its equipment at or below a 15% annualized leak rate. Where the annualized leak rate from a CCA exceeds 15%, the Facility must repair the leak to bring the leak rate down to below 15% within thirty days. 40 C.F.R. § 82.156(i)(5).

19. Pursuant to 40 C.F.R. § 82.156(i)(3), upon conclusion of repairs to a leaking IPRA, the Facility must perform an initial verification test demonstrating that the leaks have been repaired. A follow-up verification leak test must be performed within thirty days following the initial verification test. 40 C.F.R. § 82.156(i)(3).

20. Pursuant to 40 C.F.R. § 82.156(i)(3)(iii), if leak repair of an IPRA is attempted but the follow-up verification test reveals that the leak rate is more than 35%, the facility must notify the EPA within thirty (30) days, in accordance with 40 C.F.R. § 82.166(n).

21. If leak repairs of an CRA, IPRA, or CCA have not been successfully completed within thirty days of discovering leaks that exceed the applicable allowable leak rate, or within thirty days of a failed follow-up verification test, the Facility must develop a one-year plan to retrofit or retire the leaking Appliance. The Facility then must retrofit or retire the Appliance in accordance with the plan, within one year from the date of the plan. *Id.*

22. Pursuant to 40 C.F.R. § 82.166(k), the owner/operator of CRAs, IPRA's, or CCAs containing fifty pounds or more of Refrigerant must maintain records detailing the date and type of service, as well as the amount of Refrigerant added to the equipment.

23. Pursuant to 40 C.F.R. § 82.162, any person acquiring certain Refrigerant recovery

equipment must provide a certification to EPA identifying the purchaser of the equipment, the location of the equipment, information about the equipment and how it will be used, and a statement that the equipment will properly be used in servicing or disposing of Appliances.

24. All records required to be maintained pursuant to 40 C.F.R. § 82.166, must be kept for a minimum of three years. 40 C.F.R. § 82.166(m).

25. For all reports to EPA required to be made pursuant to 40 C.F.R. § 82.166(n), the owner/operator of IPRA's must report inter alia, the leak rate of any Appliance, the method used to determine the leak rate, the date a leak rate more than the allowable leak rate was discovered, the location and extent of leaks, and the date and type of repair work that has been completed.

26. Section 113(a)(3) of the CAA authorizes the Administrator to commence a civil action against any person in federal district court where such person has violated any requirement or prohibition of Title VI ("Stratospheric Ozone-Protection" [inclusive of Section 608]), including a requirement of any rule promulgated under the Act (which includes the Subpart F Regulations). 42 U.S.C. § 7413(a)(3)(C).

27. Section 113(b)(2) of the CAA authorizes the Administrator to bring a civil action against any person in a federal district court where such person has violated any requirement or prohibition of Title VI ("Stratospheric Ozone-Protection" [inclusive of Section 608]), including a requirement of any rule promulgated under the Act (which includes the Subpart F Regulations). 42 U.S.C. § 7413(b)(2).

28. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the assessment of civil penalties not to exceed \$25,000 per day for each violation of Section 608 of the CAA, 42 U.S.C. § 7671g.

29. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004) EPA may seek civil penalties of up to \$27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004 and up to \$32,500 per day for each violation occurring after March 15, 2004.

GENERAL ALLEGATIONS COMMON TO ALL FACILITIES

30. At times relevant to this Complaint Defendant has been the owner or operator of certain Facilities, and of each CCA, CRA, and IPRA located in the Defendants' Subject Facilities. Those Facilities are located in the following communities: Wallingford, Connecticut; Evansville and Mount Vernon (Logistics and Manufacturing facilities), Indiana; Billerica, Massachusetts; Zeeland, Michigan; Hopewell, Lawrenceville, and New Brunswick, New Jersey; Buffalo and East Syracuse, New York; Barceloneta, Humacao, and Mayaguez, Puerto Rico (collectively, "Defendants' Subject Facilities").

31. Each CCA, CRA, and IPRA at Defendants' Subject Facilities is an "Appliance" within the meaning of 42 U.S.C. §7671(g)(1) and 40 C.F.R. § 82.152.

32. At all times relevant to this Complaint, Defendant employed Class I substances and Class II substances (Refrigerant) in its CCAs, CRAs, and IPRAs at Defendant's Subject Facilities.

33. At all times relevant to this Complaint, the full charge of Refrigerant required for each of the affected CCAs, CRAs, and IPRAs at each of Defendant's Subject Facilities has been more than fifty pounds.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF SECTION 608 OF THE CAA, 40 C.F.R. § 82.156(i)(1), and 40 C.F.R. § 82.156(i)(2) – (Failure to Repair Leaking CRAs and IPRA's)

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. The annualized leak rates of Class I and Class II substances from certain IPRA's and CRAs at certain of Defendant's Facilities exceeded 35% on certain occasions, and during those occasions, Defendant failed within 30 days to repair the leak, without otherwise developing a one-year plan for retrofit or retirement of one or more of such leaking Appliances, in violation of Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(1) (for CRAs) and 40 C.F.R. § 82.156(i)(2) (for IPRA's). The location of each Facility, the CRAs and IPRA's in violation, and dates of violation are described in Table of Violations 1 to this Complaint.

36. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, 40 C.F.R. § 82.156(i)(1), and 40 C.F.R. § 82.156(i)(2), at each such leaking CRA and IPRA, Defendant is liable for civil penalties of not more than \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

37. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such leaking CRA and IPRA identified in Table of Violations 1 and comply with the requirements of 40 C.F.R. § 82.156(i)(1) (for CRAs) and 40 C.F.R. § 82.156(i)(2) (for IPRA's) with respect to future leaks.

SECOND CLAIM FOR RELIEF

VIOLATIONS OF SECTION 608 OF THE CAA and 40 C.F.R. § 82.156(i)(5)  
(Failure to Repair Leaking CCAs)

38. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

39. The annualized leak rates of Class I and Class II substances from certain CCAs at certain of Defendant's Facilities exceeded 15% on certain occasions, and during those occasions, Defendant failed within 30 days to repair the leak, without otherwise developing a one-year plan for retrofit or retirement of one or more of such leaking Appliances, in violation of Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(5). The location of each Facility, the CCAs in violation, and dates of violation are described in Table of Violations 2 to this Complaint.

40. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(5), at each such leaking CCA, Defendant is liable for civil penalties of not more than \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

41. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such leaking CCA identified in Table of Violations 2 and comply with the requirements of 40 C.F.R. § 82.156(i)(5) with respect to future leaks.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)  
(Failure to Conduct Follow-up Verification Leak Test for IPRA's)

42. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

43. Defendant failed to perform follow-up verification leak tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3) on certain IPRA's at certain of Defendant's Facilities. The location of each Facility, the IPRA's in violation, and dates of violation are described in Table of Violations 3 to this Complaint.

44. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), at each such leaking IPRA Appliance at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more than \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

45. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant attain compliance with 40 C.F.R. § 82.156(i)(3) for each unit in violation identified in Table 3 at Defendant's Facilities and for all future leaks subject to the requirements of 40 C.F.R. § 82.156(i)(3).

#### FOURTH CLAIM FOR RELIEF

##### **VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(iii) (Failure to Notify EPA of Failed Follow-Up Verification)**

46. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

47. Defendant failed to notify EPA that its IPRA's failed to pass a follow-up verification test as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii) with respect to certain IPRA's at certain of Defendant's Facilities. The location of each Facility, the IPRA's in violation, and dates of violation are described in Table of Violations 4 to this Complaint.

48. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii) identified in Table of Violations 4, Defendant is liable for civil penalties of not

more than \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

49. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant attain compliance with 40 C.F.R. § 82.156(i)(3)(iii) for each IPRA in violation, as identified in Table of Violations 4 and for all future failures to notify EPA that it failed to pass a follow-up verification subject to the requirements of 40 C.F.R. § 82.156(i)(3)(iii).

#### FIFTH CLAIM FOR RELIEF

##### VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(6) (Failure to Develop Retrofit or Retirement Plan)

50. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

51. Defendant failed to develop a written, one-year retrofit or retirement plan for leaking CCAs, CRAs, and IPRA's within the time required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6) with respect to certain CCAs, CRAs, and IPRA's at certain of Defendant's Facilities. The location of each Facility, the CCAs, CRAs, and IPRA's in violation, and dates of violation are described in Table of Violations 5 to this Complaint.

52. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6) at each such leaking CCA, CRA, and IPRA at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more than \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

53. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant develop a retrofit or retirement

plan, as required by 40 C.F.R. § 82.156(i)(6) at each such CCA, CRA, and IPRA identified in Table of Violations 5 and for all future occurrences at Defendants Facilities when required by 40 C.F.R. § 82.156(i)(6).

#### SIXTH CLAIM FOR RELIEF

##### VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(ii) (Failure to Retrofit or Retire Appliances within one year)

54. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

55. Defendant failed to retrofit or retire leaking CCAs, CRAs, or IPRAs, or otherwise comply with the requirements of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii) within one year after following discovery of and failure to repair the leak, or after a follow-up verification test indicated that repairs to the IPRAs were not successfully completed, or otherwise within the time required by 40 C.F.R. § 82.156(i)(3)(ii), with respect to certain CCAs, CRAs, or IPRAs at certain of Defendant's Facilities. The location of each Facility, the CCAs, CRAs, and IPRAs in violation, and dates of violation are described in Table of Violations 5.

56. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii), at each such leaking CCA, CRA, or IPRA identified in Table 6, Defendant is liable for civil penalties of not more than \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

57. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such CCA, CRA, and IPRA identified in Table 5 and for all future occurrences at Defendant's Facilities when required by 40 C.F.R. § 82.156(i)(3)(ii).

SEVENTH CLAIM FOR RELIEF

VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.166(k)  
(Failure to Maintain Service Records)

58. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

59. Defendant failed to maintain records detailing the date(s) and type(s) of maintenance, service or repair activities on its CCAs, CRAs, and IPRAs as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k) with respect to certain CCAs, CRAs, and IPRAs at certain of Defendant's Facilities. The location of each Facility, the CCAs, CRAs, and IPRAs in violation, and dates of violation are described in Table of Violations 6 to this Complaint.

60. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k) at each such CCAs, CRAs, and IPRA at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more than \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

61. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant obtain and maintain the service records in accordance with 40 C.F.R. § 82.166(k) and to maintain all future service records in accordance with 40 C.F.R. § 82.166(k).

EIGHTH CLAIM FOR RELIEF

VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.166(l)  
(Failure to Maintain Technician Certification Records)

62. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

63. Defendant failed to maintain a copy of the certificates of those technicians certified

under 40 C.F.R. § 82.161 at certain of Defendant's Facilities identified in Table of Violations 7 of this Complaint during the period of time identified in Table of Violations 7, as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(l).

64. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(l) at each such leaking IPRA at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more than \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

65. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, requiring that Defendant obtain and maintain a copy of the certificates of those technicians certified currently or in the future in accordance with 40 C.F.R. § 82.161 at Defendant's Facilities.

#### NINTH CLAIM FOR RELIEF

##### VIOLATIONS OF THE CAA AND 40 C.F.R. § 82.166(m) (Failure to Retain Records)

66. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

67. Defendant failed to maintain records required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(m) for a minimum of three years at certain of Defendants Facilities for certain CCAs, CRAs, and IPRA's at certain of Defendant's Facilities identified in Table of Violations 8 of this Complaint during the period of time identified in Table of Violations 8.

68. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(m) at each such CCA, CRA, and IPRA at Defendant's facilities, Defendant is liable for civil penalties of not more than \$27,500 per day for each violation occurring on or before March

15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

69. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant comply with the records retention provisions of 40 C.F.R. § 82.166(m) in the future.

#### TENTH CLAIM FOR RELIEF

##### VIOLATIONS OF THE CAA AND 40 C.F.R. § 82.162(b) (Failure to Certify to EPA Transfer of Ownership of On-Site Recovery Units)

70. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

67. Defendant failed to provide certification as required by 40 C.F.R. § 82.162(b) regarding the transfer of ownership of certain equipment used for the recovery of refrigerant in conjunction with maintaining, servicing, or repairing Appliances, located at Defendant's facility in Billerica, Massachusetts. Defendant's violation occurred from October 31, 2001 through October 31, 2004.

68. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.162(b) for each such unit of Defendant's recovery equipment at its Billerica, Massachusetts facility, Defendant is liable for civil penalties of not more than \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.


69. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant comply with the certification provisions of 40 C.F.R. § 82.162(b) in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that the Court:

1. Enjoin Defendant from operating Defendant's Facilities except in accordance with the Clean Air Act, 42 U.S.C. §§7401-7671q, and regulations promulgated thereafter, 40 C.F.R. Part 82, Subpart F;
2. Assess civil penalties against the Defendant of not more than \$27,500 per violation for violations occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004;
3. Grant the United States injunctive relief as requested in this Complaint;
4. Grant the United States an award for its costs and expenses incurred in this action; and
5. Grant the United States such other and further relief as this Court deems appropriate.

Respectfully Submitted,

  
\_\_\_\_\_  
RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources  
Division

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